STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PAZ ANULACION, Complainant,	)	CASE NO. 4584-U-83-755
vs.	)	DECISION NO. 1680 - PECB
TACOMA PUBLIC LIBRARY, Respondent.	)	PRELIMINARY RULING

The complainant filed a complaint with the Public Employment Relations Commission on April 14, 1983, naming the Tacoma Public Library as respondent. The statement of facts alleges:

1. I, Paz Anulacion, an emloyee in the bargaining unit, initiated a grievance under the collective bargaining agreement between the Tacoma Public Library and AFSCME Local 120.

2. Neither the Union nor the Library objected to the use of the collective bargaining procedure in the processing of the grievance up to the arbitration stage.

3. When I invoked arbitration, the employer objected to the use of that part of the collective bargaining agreement on the grounds that only the Union or employer could use the arbitration procedure.

4. I wrote the Union for their position on the matter of arbitration, via my letter dated March 20, 1983.

5. On March 29, 1983 the Union responded back to me stating that they were not preventing my case from going to arbitration, and that the decision of the Library was its own.

6. In accordance with RCW 41.56.080, I did not attempt to resolve my grievance contrary to the terms of the collective bargaining agreement which were in affect -- that is, I utilized the provision provided in the collective bargaining agreement to process my grievance. I also requested a list of a panel of arbitrators from the source which was negotiated in the collective bargaining agreement.

7. I also informed the Union that I would pay my share of the arbitration proceeding with the Tacoma Public Library.

8. Enclosed is a copy of the pertinent correspondence relating to this ULP charge. (March 11, 1983 letter to my personal representative from the Tacoma Public Library; my March 20, 1983 letter to the Union; and the Union response dated March 29, 1983).

The matter is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. The question at hand is whether, assuming all of the facts alleged to be true and provable, the complaint states claim for relief which can be granted through the unfair labor practice procedures of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

DISCUSSSION:

RCW 41.56.030(4) defines collective bargaining as including the obligation of parties to execute a written collective bargaining agreement. The same definition makes grievance procedures a mandatory subject of collective bargaining between a public employer and the exclusive bargaining representative of its employees.

The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of RCW 41.56 to enforce collective bargaining agreements. See: City of Walla Walla, Decision 104 (PECB, 1976). Nor does it enforce the agreement to arbitrate. See: Thurston County, Decision 103 (PECB, 1976). To the extent that the complainant claims a contractual right to arbitrate her grievance, that right is beyond the authority of the Commission to enforce.

The final and binding arbitration of grievances arising over the interpretation or application of collective bargaining agreements is authorized in RCW 41.56.122 and encouraged by RCW 41.58.020(4), but only in the context of the relationship between an employer and the organization which is the exclusive bargaining representative of the employees. RCW 41.56.080 provides:

> The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative, of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: Provided, That any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.

The proviso contained in RCW 41.56.080 does not guarantee individual employees any particular type of grievance procedure, and certainly does not guarantee them a right to arbitration. In fact, any attempt by the employer to give individual employees the right to arbitrate grievances independently would bear a substantial potential for conflict with the principle of exclusive representation set forth in RCW 41.56.080. An arbitrator in a proceeding between only one of the contracting parties (the employer) and a third-party beneficiary to the contract (the employee proceeding independently) could interpret the contract in a manner conflicting with the interpretation intended by both of the signatory parties, thereby undermining the union's status as exclusive bargaining representative of the bargaining unit. A similar quest for arbitration was ended, for similar reasons, in City of Seattle, Decision 1226 (PECB, 1981).

For the reasons stated above, the complaint fails to state claims on which relief can be granted. With the direction provided here as to what is not available to the complainant through the unfair labor practice procedures of the Commission, she may be better able to focus attention on any claims which are within the jurisdiction of the Commission.

NOW, THEREFORE, it is

ORDERED

The complainant will be allowed a period of fourteen (14) days following the date of this order to amend the complaint. In the absence of an amendment, the complaint will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington this 11th day of August, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director